

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID PENNEWELL,	§	
	§	No. 405, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	No. 0102006372
	§	
Plaintiff Below,	§	
Appellees.	§	

Submitted: November 29, 2004

Decided: January 26, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 26th day of January, 2005 on consideration of the briefs of the parties, it appears to the Court that:

(1) The appellant, David Pennewell, was convicted following a jury trial in the Superior Court of several drug offenses including trafficking in cocaine. The circumstances surrounding Pennewell's conviction are not at issue in this appeal, and we will not repeat them generally here.¹ After his conviction and appeal, Pennewell filed a motion pursuant to Superior Court Criminal Rule 61, asserting ineffective assistance of counsel as a ground for postconviction relief. The Superior Court denied

¹ The facts have previously been stated by this Court in its decision on Pennewell's direct appeal. *See Pennewell v. State*, No. 410, 2002, 2003 Del. LEXIS 258 (Del. Apr. 29, 2003).

the motion, and Pennewell appeals to this Court. We conclude that the Superior Court did not abuse its discretion in denying Pennewell's motion for postconviction relief. Accordingly, we affirm.

(2) Pennewell's first argument on appeal is that the Superior Court abused its discretion in denying his motion for postconviction relief. He argues that his former trial counsel, Eugene Maurer, Jr., rendered ineffective assistance in violation of his constitutional right to effective assistance of counsel.² Pennewell asserts that Maurer's assistance was ineffective because Maurer failed to file a timely motion to suppress evidence. We review for abuse of discretion the Superior Court's denial of postconviction relief.³

(3) To prevail on a claim of ineffective assistance of counsel, the defendant bears the burden of showing that counsel's representation fell below an objective standard of reasonableness and that the deficiencies in counsel's representation caused actual prejudice.⁴ Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been

² See U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense.").

³ *Outten v. State*, 720 A.2d 547, 551 (Del. 1998).

⁴ *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

different.”⁵ This standard is highly demanding and leads to a “strong presumption that the representation was professionally reliable.”⁶

(4) Maurer did not render ineffective assistance by not filing a pretrial motion to suppress evidence because such conduct was a reasonable exercise of professional judgment. The present record shows that Pennewell repeatedly denied any connection to a green Ford Taurus where the police found crack cocaine and other evidence leading to his arrest. Pennewell therefore instructed Maurer to file a motion to suppress this evidence as the product of an illegal search. To do so, however, would require Pennewell to acknowledge an interest in the vehicle.⁷ Determining that such an acknowledgment would be inconsistent with Pennewell's defense that he had no connection with the vehicle and that the police framed him, Maurer exercised his professional judgment in making a strategic decision not to file a motion to suppress. Pennewell therefore failed to satisfy his burden of showing that Maurer's representation was objectively unreasonable. Accordingly, it was unnecessary for the Superior Court to determine whether Maurer's representation prejudiced Pennewell.

(5) Pennewell also assigns error to the Superior Court's refusal to hold an

⁵ *Dawson v. State*, 673 A.2d 1186, 1190 (Del. 1996) (quoting *Flamer v. State*, 585 A.2d 736, 753-54 (Del. 1990)).

⁶ *Wright v. State*, 671 A.2d 1353, 1356 (Del. 1996) (quoting *Flamer*, 585 A.2d at 753).

⁷ *Thomas v. State*, 467 A.2d 954, 957-58 (Del. 1983).

evidentiary hearing on the claims made in his motion for postconviction relief. In a postconviction relief proceeding, the Superior Court has broad discretion to determine whether to hold an evidentiary hearing.⁸ If the Superior Court determines in its discretion that an evidentiary hearing is unnecessary, then summary disposition of the motion is entirely appropriate.⁹ An evidentiary hearing was not necessary in the present case. Here, Maurer submitted an affidavit in response to allegations contained in Pennewell's postconviction application and Pennewell submitted a response to Maurer's affidavit. The Superior Court also had extensive familiarity with the background of this case. Thus, the Superior Court properly exercised its discretion in summarily disposing of Pennewell's motion for postconviction relief without requiring an evidentiary hearing.

(6) We conclude that the judgment of the Superior Court should be affirmed on the basis of its decision of August 18, 2004. The issues on appeal are controlled by settled Delaware law. To the extent that judicial discretion is implicated, clearly there

⁸ DEL. SUPER. CT. CR. R. 61(h)(1).

⁹ See DEL. SUPER. CT. CR. R. 61(d)(4), (h)(3). See also *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996) (holding that summary disposition is appropriate when an evidentiary hearing is unnecessary).

was no abuse of discretion.

NOW, THEREFORE, IT IS SO ORDERED that the judgment of the Superior Court is ***AFFIRMED***.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

